

Message Text

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TO SECSTATE WASHDC IMMEDIATE 0758

UNCLAS SECTION 1 OF 2 KINGSTON 3395

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SUBJECT: CONGRESSIONAL INQUIRY OF GOVERNOR GILLIGAN

REFERENCE: A. STATE 093105 B. KINGSTON 0075 C. KINGSTON 0189

1. SUMMARY & CONCLUSION: THERE HAVE BEEN VERY FEW CASES OF GOVERNMENT TAKE-OVERS OF PROPERTIES BELONGING TO AMERICANS. ONLY TWO COMPLAINTS INVOLVING GOVERNMENT ACQUISITION OF PROPERTY BELONGING TO U.S. CITIZENS HAVE BEEN RECEIVED BY THIS EMBASSY: ONE INVOLVES A BANK FORECLOSURE CASE; THE SECOND RELATES TO A DECLARATION OF INTENDED ACQUISITION FOR LAND SETTLEMENT, NOT AN ACTUAL ACQUISITION. THE MOST FREQUENT COMPLAINTS INVOLVE INABILITY TO CONVERT LOCAL CURRENCY PROCEEDS (FROM PROPERTY SALE OR INHERITANCES) INTO U.S. DOLLARS WHICH REFLECT THE COUNTRY'S ACUTE FOREIGN EXCHANGE SHORTAGE AND ARE NOT DIRECTLY PERTINENT TO THE CONGRESSIONAL INQUIRY. THE GOVERNMENT'S APPARENT RELUCTANCE TO EVICT SQUATTERS AND URBAN TENANTS WHO REFUSE TO PAY RENT APPEARS TO BE A GREATER THREAT TO PROPERTY OWNERS THAN FORMAL GOVERNMENT CONDEMNATION PROCEEDINGS. THERE HAVE BEEN NO CASES OF GOVERNMENT EXPROPRIATION WITHOUT COMPENSATION; AND THERE IS NO EVIDENCE OF DISCRIMINATION AGAINST AMERICAN CITIZENS IN ANY OF THE COMPLAINTS
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RECEIVED. (END SUMMARY)

2. THE MISSION HAS CONDUCTED A THOROUGH SEARCH OF EMBASSY AND CONSULAR FILES AND CALLED ON OFFICIALS OF THE URBAN DEVELOPMENT CORPORATION, THE LANDS DEPARTMENT OF THE MINISTRY OF AGRICULTURE AND THE TOURISM SECTION OF THE MINISTRY OF FOREIGN AFFAIRS. THESE ARE THE ONLY

GOVERNMENT AGENCIES THAT WOULD BE INVOLVED IN CASES OF PROPERTY TAKE-OVER.

3. ONLY THREE CASES OF GOVERNMENT PROPERTY ACQUISITIONS FROM U.S. CITIZENS DURING THE LAST TWELVE MONTHS HAVE BEEN IDENTIFIED. A FOURTH CASE INVOLVES AN ATTEMPTED TAKE-OVER OF A PORTION OF A PROPERTY UNDER THE LAND ACQUISITION ACT AND IS CURRENTLY UNDER NEGOTIATION. ALL FOUR ARE DISCUSSED IN DETAIL BELOW:

A. THE SALE OF THE HOLIDAY INN AT MONTEGO BAY (THE ROSE HALL LTD. CASE): THIS COMPLEX CASE HAS BEEN DESCRIBED IN DETAIL BY BOTH PARTIES TO THE DISPUTE. MR. JOHN ROLLINS (WHO CONTROLS ROSE HALL LTD.) HAS STATED HIS CASE IN A WIDELY CIRCULATED MEMORANDUM (UNDATED BUT RECEIVED HERE IN FEBRUARY, 1978) ENTITLED "BACKGROUND FACTS OF CHASE SALE TO JAMAICAN GOVERNMENT" AND IN "COMMENTS RE TELEGRAPHIC LETTER FROM AMBASSADOR IRVING TO CONGRESSMAN VANDER JAGT" (JAN., 1978). THE CHASE MERCHANT BANKERS CASE WAS SUMMARIZED IN REFEELS B AND C AND IN A DETAILED LETTER BY MR. JOHN C. HALEY, EXECUTIVE VICE PRESIDENT OF THE CHASE MANHATTAN BANK TO CONGRESSMAN GUY VANDER JAGT, DATED JAN 16, 1978. AT THE RISK OF OVER-SIMPLIFICATION, THE SALIENT FACTS OF THE CASE, AS WE UNDERSTAND THEM, ARE AS FOLLOWS:

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A. THIS IS A FORECLOSURE CASE INVOLVING A BORROWER (ROSE HALL LTD.) AND A COMMERCIAL BANK (THE CHASE MERCHANT BANKERS JAMAICA LIMITED). A GOVERNMENT AGENCY PURCHASED THE PROPERTY -- A HOTEL IN MONTEGO BAY LEASED TO HOLIDAY INN -- AFTER IT WAS PUT UP FOR SALE BY ROSE HALL LTD. AND THE BANK WHICH HELD THE SHARES THAT WERE PLEDGED AS COLLATERAL FOR ITS LOAN.

2. A LOAN FOR \$3 MILLION WAS GRANTED BY CHASE MERCHANT BANKERS TO ROSE HALL LTD. IN MAY OF 1974 TO HELP BUILD THE HOTEL. THE PAYMENT OF INTEREST WAS IN DEFAULT BEGINNING IN AUGUST OF 1974. THE BORROWER ALSO FAILED TO MAKE THE FIRST PAYMENT OF PRINCIPAL OF \$187,000 DUE ON MAY 31, 1975. THE MERCHANT BANK ATTEMPTED TO COLLECT THROUGH JANUARY, 1976, THEN BEGAN FORECLOSURE PROCEEDINGS. AT THAT TIME, ROSE HALL WAS ENGAGED IN NEGOTIATING THE SALE OF THE HOTEL TO THE GOVERNMENT'S URBAN DEVELOPMENT CORPORATION (UDC). CHASE INTERCEDED AND BECAME A DIRECT PARTICIPANT IN THE SALE NEGOTIATIONS.

3. THE SUPREME COURT OF JAMAICA ISSUED A STAY OF

EXECUTION ON THE SALE IN OCTOBER, 1976. ITS RESTRAINING ORDER WAS LIFTED IN SEPTEMBER, 1977, PERMITTING THE SALE TO BE COMPLETED.

4. MR. ROLLINS' COMPLAINT IS THAT THE PRICE HE OBTAINED FOR HIS HOTEL (US\$8.5 MILLION PLUS \$1 MILLION FOR 3,000 ACRES OF LAND) WAS FAR BELOW THE TRUE VALUE OF THE PROPERTY. HE BASES HIS ALLEGATION ON THE FACT THAT HE AND THE UDC HAD AGREED ON A PRICE OF US\$14.25 MILLION DURING THE LAST HALF OF 1975 AND THAT THE UDC SUBSEQUENTLY WENT BACK ON ITS OFFER.

5. ON THE OTHER HAND, CHASE MERCHANT BANKERS ARGUES THAT THE UDC REDUCED ITS OFFER WHEN IT REALIZED THAT UNCLASSIFIED

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THE HOLIDAY INN HOTEL WAS OPERATING AT A LOSS. THE REDUCED PRICE, ACCORDING TO THE BANK, IS EXPLAINED BY THE DEPRESSED STATE OF THE TOURISM INDUSTRY AND OF THE ECONOMY GENERALLY, AND BY THE EXTREME SCARCITY OF DEVELOPMENT FUNDS.

6. THE MATTER OF THE PRICE IS STILL IN LITIGATION (IN THE APPELLATE COURT). IT SEEMS TO BE CLEAR THAT THIS IS A FORECLOSURE CASE AND NOT ONE OF GOVERNMENT EXPROPRIATION.

B. 1. THE ROSE HALL INTERCONTINENTAL HOTEL: THIS PROPERTY WAS TAKEN OVER BY THE GOVERNMENT IN 1977. IT WAS A VOLUNTARY SALE. THE GROSS ASSET VALUE OF THE PROPERTY WAS ESTIMATED AT \$23 MILLION. HOWEVER, SINCE THE HOTEL HAD DEBTS AMOUNTING TO ABOUT \$15 MILLION, THE TOTAL AMOUNT THAT THE GOVERNMENT HAD TO PUT UP WAS \$8 MILLION, ONLY \$2.3 MILLION OF WHICH WAS PAID IN CASH TO MR. JOHN ROLLINS, WHO ALSO HAD A SUBSTANTIAL EQUITY PARTICIPATION IN THIS HOTEL. THE BALANCE IS TO BE REPAID OVER A PERIOD OF TIME.

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2. ROSE HALL INTERCONTINENTAL HAD OBTAINED TWO LOANS TO FINANCE THE CONSTRUCTION AND ACQUISITION OF THE PROPERTY; \$9.94 MILLION FROM THE BANK OF NOVA SCOTIA AND \$4.3 MILLION FROM THE EXPORT-IMPORT BANK. THE COMPANY WAS IN DEFAULT IN AUGUST, 1976 ON ITS REPAYMENT OF PRINCIPAL (BY \$360,000) AND BY ANOTHER \$724,000 IN FEBRUARY, 1977. OWING TO OPERATING LOSSES, THE HOTEL ANNOUNCED THAT IT WOULD CLOSE AT THE END OF MAY, 1977. AT THAT TIME, THE GOVERNMENT STARTED NEGOTIATIONS FOR TAKE-OVER.

3. THE MISSION HAS RECEIVED NO COMPLAINT FROM ROSE HALL INTERCONTINENTAL OR FROM MR. ROLLINS WITH RESPECT TO THIS TRANSACTION, SO IT CAN BE ASSUMED THAT THE PRICE OBTAINED IS CONSIDERED FAIR.

C. THE ROYAL CARIBBEAN: THIS HOTEL WAS OFFERED FOR SALE TO THE GOVERNMENT BY RAMADA INNS. THE OFFER WAS FOR US\$500,000, AND WAS ACCEPTED. THE SALE WAS EFFECTED IN NOVEMBER, 1977. THERE WAS NO GOVERNMENT PRESSURE OF ANY KIND. THE HOTEL CHAIN APPARENTLY DECIDED THAT IT DID NOT WISH TO MANAGE A HOTEL IN THE RESORT BUSINESS (ITS OTHER HOTELS ARE IN MAJOR CITIES).

D. 1. THE ERROL FLYNN ESTATE: THIS CASE IS NOT ACTUALLY UNCLASSIFIED

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WITHIN THE PURVIEW OF THE CONGRESSIONAL INQUIRY (REF A) AS NO TRANSACTION HAS TAKEN PLACE SO FAR. HOWEVER, IT IS OF SUCH PROMINENCE THAT THE MISSION DECIDED TO INCLUDE IT IN RESPONSE TO REFTEL A.

2. THE FLYNN ESTATE CASE INVOLVES TWO CLOSELY INTER-RELATED ASPECTS: OCCUPATION BY SQUATTERS AND THE GOVERNMENT'S ATTEMPT TO PURCHASE PART OF THE ESTATE TO SETTLE SMALL FARMERS, SOME OF WHOM HAVE ALREADY SETTLED ON THE PROPERTY.

3. GIVEN THE ISLAND'S VERY HIGH POPULATION DENSITY

(500 PER SQUARE MILE), PRESSURE TO SETTLE ON LARGE ESTATES (ESPECIALLY THOSE WITH IDLE LANDS) IS STRONG. THE FLYNN ESTATE HAS 1,600 ACRES. MRS. FLYNN HAS COMPLAINED THAT 150 ACRES OF HER LAND WERE ILLEGALLY OCCUPIED IN 1973 AND ARE STILL BEING SQUATTED ON DESPITE APPEAL TO LOCAL AUTHORITIES.

4. ON NOVEMBER 29, 1977, THE GOVERNMENT SERVED ON MRS. FLYNN A "DECLARATION OF INTENDED ACQUISITION UNDER SECTION 5 OF THE LAND ACQUISITION ACT" FOR 570 ACRES AS THESE LANDS WERE NEEDED "FOR LAND SETTLEMENT PURPOSES".

5. NO PART OF THIS LAND HAS BEEN TAKEN OVER BY THE GOVERNMENT TO DATE. ACCORDING TO THE COMMISSIONER OF LANDS (WHO IS IN CHARGE OF THE CASE), MRS. FLYNN HAS SO FAR REFUSED TO NEGOTIATE THE MATTER. THE CASE HAS NOT GONE TO COURT AND THE COMMISSIONER HOPES THAT A LEGAL CONFRONTATION CAN BE AVOIDED.

6. ACCORDING TO THE COMMISSIONER OF LANDS, IF MRS. FLYNN AGREES TO NEGOTIATE, THE PROCEDURE WOULD UNCLASSIFIED

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BE AS FOLLOWS: THE GOVERNMENT WOULD INSPECT THE PROPERTY, ASSESS ITS VALUE AND MAKE HER AN OFFER WHICH SHE MAY REJECT. SHE CAN EMPLOY A PRIVATE LAND ASSESSOR AND MAKE A COUNTER-OFFER. IF THE GOVERNMENT REJECTS IT, AN ARBITRATOR WOULD BE APPOINTED THAT IS ACCEPTABLE TO BOTH SIDES. IF AGREEMENT STILL CANNOT BE REACHED, THE MATTER, AS A LAST RESORT, WOULD BE TAKEN TO THE COURT OF APPEAL.

7. THE LANDS DEPARTMENT WOULD ALSO AGREE TO A TEN-YEAR LEASE OF THE LAND CLAIMED AS AN ALTERNATIVE TO ACQUISITION.

E. THE CASE OF SAM L. SOLOMON: THIS CASE IS FAR LESS PROMINENT THAN THE OTHER FOUR, BUT IS MENTIONED HERE BECAUSE IT REPRESENTS A PROBLEM THAT WE UNDERSTAND SEVERAL JAMAICAN PROPERTY OWNERS ARE FACING. MR. SOLOMON, A U.S. CITIZEN, PURCHASED 15 1/2 ACRES OF LAND IN MONTEGO BAY, DEVELOPED IT AS A BOTANICAL GARDEN, RESTAURANT AND BAR AND LEASED IT FOR ONE YEAR TO A JAMAICAN IN 1976. THE TENANT STOPPED PAYING RENT IN NOVEMBER OF THAT YEAR, REFUSED TO VACATE THE PROPERTY AND IS STILL LIVING THERE RENT-FREE. MR. SOLOMON OBTAINED A COURT ORDER BUT THE POLICE HAVE FAILED TO ENFORCE IT. MR. MR. SOLOMON'S COMPLAINTS BROUGHT NO RESULT, AND HE HAS REFERRED THE MATTER TO THE EMBASSY WHICH IS IN THE PROCESS OF CALLING IT TO THE ATTENTION OF HIGHER AUTHORITIES.

F. OTHER COMPLAINTS; THE MOST FREQUENT COMPLAINT BY FAR MADE BY AMERICANS TO THE EMBASSY RELATES TO THE GREAT DIFFICULTY OF SECURING PERMISSION TO CONVERT JAMAICAN CURRENCY BALANCES INTO U.S. DOLLARS. A NUMBER OF AMERICANS WHO HAVE SOLD PROPERTIES IN JAMAICA OR OBTAINED INHERITANCES HAVE FOUND THAT THEY CANNOT REPATRIATE THEIR FUNDS. THIS IS THE RESULT OF THE ACUTE FOREIGN EXCHANGE SHORTAGE. THE RESTRICTION APPLIES TO JAMAICANS AND FOREIGNERS ALIKE. THERE IS UNCLASSIFIED

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NO EVIDENCE OF DISCRIMINATION.
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